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which claims benefit of U.S. provisional application 60/054,523, filed August 4, 1997, and which claims benefit of U.S. provisional application 60/076,545, filed March 2, 1998. All of the above patent applications are incorporated by reference herein.--

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REMARKS

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In view of the following remarks and attached Declaration, the Examiner is respectfully requested to withdraw the rejections, and allow claims 1, 3-8 and 55-80, the currently pending claims. No new matter is added.

The status of non-provisional patent applications referenced for priority has been updated.

Corrected drawings are attached herewith.

A request for Declaration of an Interference with U.S. Patent no. 5,998,205, Hallenbeck *et al.*, is attached herewith.

Claims 1-8, 59, 61 and 67 have been provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-8, 28-31, 33-34, 42 and 44-45 of co-pending Application no. 09/151,376. Applicants respectfully submit that when a provisional rejection of this type is made, it is proper to issue one of the applications and allow a terminal disclaimer to be filed in the other, and agree to provide a suitable terminal disclaimer at such time as a patent is issued.

As stated in Applicants response to the Office Action of January 30, 2002, Applicants have agreed to provide a terminal disclaimer for the present claims over U.S. Patent no. 5,698,443, U.S. Patent no. 5,871,726, U.S. Patent no. 6,197,293, and U.S. Patent no. 6,254,862, as appropriate, upon indication of allowable subject matter.

Claims 1-6, 8 and 55-77 have been rejected under 35 U.S.C. 102 (e) as anticipated by Gregory *et al.*, US2001/0053768. Attached herewith is a Declaration under 37 C.F.R. 1.131 by Applicants, which Declaration antedates the May 3, 1995 priority date of Gregory *et al.* Withdrawal of the rejection is requested.

Claims 1-6, 8, 55, and 77-80 have been rejected under 35 U.S.C. 103(a) as unpatentable

over Gregory *et al.*, taken with Bohinski *et al.*, Abe *et al.*, Grooteclaes *et al.* Attached herewith is a Declaration under 37 C.F.R. 1.131 by Applicants, which Declaration antedates the May 3, 1995 priority date of Gregory *et al.*

The secondary references fail to remedy the deficiencies of Gregory *et al.* The secondary teachings disclose specific transcriptional response elements, but provide no teaching or motivation for using such elements to construct an adenovirus vector in which the adenovirus causes selective cytolysis of target cells. Withdrawal of the rejection is requested.

#### CONCLUSION

Applicants submit that all of the claims are now in condition for allowance, which action is requested. If the Examiner finds that a Telephone Conference would expedite the prosecution of this application, she is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any other fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, order number CELL-004CON.

Respectfully submitted,

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## APPENDIX

## VERSION WITH MARKINGS TO SHOW CHANGES MADE

Please delete the paragraph on page 1, line 1 "Cross-Reference to Related Applications" and replace with the following rewritten paragraph.

--This application is a continuation of application serial number 09/151,376, filed September 10, 1995, which is a continuation-in-part of application serial no. 08/669,753, filed June 26, 1996, now issued as U.S. Patent no. 5,871,726, which is a continuation-in-part of application serial no. 08/495,034, filed June 27, 1995, now issued as U.S. Patent no. 5,698,443, the disclosure of which is herein incorporated by reference. This application is also a continuation-in-part of application serial no. 09/033,428, filed March 2, 1998, now issued as U.S. Patent no. 6,254,862, which claims the benefit of provisional application serial no. 60/039,597, filed March 3, 1997; and a continuation-in-part of application serial no. 09/033,555, filed March 2, 1998, now abandoned, which claims the benefit of provisional application serial no. 60/039,763, filed March 3, 1997; and a continuation-in-part of application serial no. 09/033,333, filed March 2, 1998, now issued as U.S. Patent no. 6,197,293, which claims the benefit of provisional application serial no. 60/039,762, filed March 3, 1997, and which claims benefit of provisional application no. 60/039,599, filed March 3, 1997 and which claims benefit of U.S. provisional application 60/054,523, filed August 4, 1997, and which claims benefit of U.S. provisional application 60/076,545, filed March 2, 1998. All of the above patent applications are incorporated by reference herein.--